

Appl. No. 09/913,871  
Atty. Docket No. 7440  
Amdt. dated January 13, 2004  
Reply to Office Action of November 13, 2003  
Customer No. 27752

### REMARKS

Claims 14-16, 21, 23, 28, 39-51, 53, and 55 are pending in the present application. No additional claims fee is believed to be due.

Claims 1, 17-20, 22, 24-27, 29-38, 52, and 54 are canceled without prejudice.

Claims 14, 21, and 23 have been amended.

It is believed these changes do not involve any introduction of new matter. Consequently, entry of these changes is believed to be in order and is respectfully requested.

Applicants thank the Examiner for the removal of the rejection under 35 U.S.C. §§ 102 and 103 in view of 5,912,218 (Chatterjee et al.)

#### Rejection Under 35 U.S.C. § 112, second paragraph

The Office Action has rejected Claims 14-16, 21, 23, 28, 30, 32, 34, 38-51, 53 and 55 under 35 U.S.C. §112, second paragraph as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Specifically, Claim 14 for being unclear in defining one surfactant and then defining another as a subset of the first, which is completely different.

Applicants have amended Claim 14 for clarification, more specifically claiming the use of an amine oxide, a low foaming nonionic surfactant having the formula having the formula  $R^1(EO)_x(PO)_y(BO)_z$ , and a co-surfactant selected from i)  $R^1O[CH_2CH(R^3)O]_m[CH_2]_kCH(OH)[CH_2]_jOR^2$ ,  $R^1O[CH_2CH(R^3)O]_eR^2$ , and mixtures thereof.

#### Rejection Under 35 USC 103(a) Over WO 99/06466

Claims 14-16, 21, 23, 28, 30, 32, 34, 38-51, 53 and 55 have been rejected under 35 USC 103(a) as being unpatentable over WO 99/06466. Applicants respectfully traverse this rejection as Chatterjee et al. does not establish a *prima facie* case of obviousness because it does not teach or suggest all of Applicants' claim limitations. Chatterjee et al. does not suggest the use of butoxy capped nonionic surfactants as required by the claimed invention of the present application. Therefore, Applicants' content that the claimed invention is unobvious and that the rejection should be withdrawn.

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Rejection Under 35 USC 103(a) Over US 6,026,296 (Mertens et al.)

Claims 1-55 have been rejected under 35 USC 103(a) as being unpatentable over Mertens et al. Applicants wish to state that US 6,026,296 was not filed in the name of Mertens et al., however, US 6,020,296 was filed in the name of Mertens et al. Applicants' response is directed to US 6,020,296. Applicants respectfully traverse this rejection as Mertens et al. does not establish a *prima facie* case of obviousness because it does not teach or suggest all of Applicants' claim limitations. Mertens et al. does not suggest the use of a combination of amine oxides, phosphine oxides, sulfoxides, and mixtures thereof with butoxy capped nonionic surfactants (ethoxylated and propoxylated) and one or more of the two other low foaming nonionic defined in the claimed invention of the present application. Therefore, Applicants' content that the claimed invention is unobvious and that the rejection should be withdrawn.

Rejection Under 35 USC 103(a) Over US 5,578,134 (Lentsch et al.)

Claims 1-55 have been rejected under 35 USC 103(a) as being unpatentable over Lentsch et al. Applicants respectfully traverse this rejection as Lentsch et al. does not establish a *prima facie* case of obviousness because it does not teach or suggest all of Applicants' claim limitations. Lentsch et al. teaches a  $C_{12-7}(EO)_x(BO)_{1-7}R$  wherein R is a  $C_{1-6}$  alkyl moiety, or an alkyl capped nonionic surfactant. Lentsch et al. does not suggest the use of butoxy capped nonionic surfactants as required by the claimed invention of the present application. Therefore, Applicants' content that the claimed invention is unobvious and that the rejection should be withdrawn.

Double Patenting

The Office Action has provisionally rejected under the judicially created doctrine of obviousness-type double patenting Claim 1 and 14-55 in view of claims 1-15 of US 5,967,157 and claims 1-17 of US 5,912,218. Applicants respectfully traverse the double patenting rejection as the claimed invention, as amended, contains elements not taught by US 5,967,157 and US 5,912,218. Specifically, Applicants submit that these references do not suggest the use of butoxy capped nonionic surfactants as required by the claimed invention of the present application.

The Office Action further has provisionally rejected under the judicially created doctrine of obviousness-type double patenting Claim 1 and 14-55 in view of claims 11-33 of copending Application No. 09/913870. Applicants submit that if and when patentable subject matter is

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granted for this case, Applicants will submit a terminal disclaimer over copending Application No. 09/913870.

#### Conclusion

In light of the above remarks, it is requested that the Examiner reconsider and withdraw the rejection under 35 U.S.C. §§112, second paragraph and 103, and judicially created doctrine of obviousness-type double patenting. Early and favorable action in the case is respectfully requested. If, prior to allowance, any outstanding issues exist, Applicants' attorney would welcome the opportunity to resolve such issues via a phone interview.

Applicants have made an earnest effort to place their application in proper form and to distinguish the invention as now claimed from the applied references. In view of the foregoing, Applicants respectfully request reconsideration of this application, entry of the amendments presented herein, and allowance of Claims 4-16, 21, 23, 28, 39-51, 53, and 55.

Respectfully submitted,

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